

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Crl. Bail Application No. 1536 of 2022

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
<u>For hearing of bail application.</u>	
<b><u>04-11-2022</u></b>	
	<p>Mr. Aamir Mansoob Qureshi, Advocate for applicant. Mr. Qadir Khan Mandokhel, Advocate a/w complainant. Mr. Talib Ali Memon, APG a/w PI Naeem Ashraf, I.O. of the case.</p> <p style="text-align: center;">=====</p> <p><b><u>Omar Sial, J.</u></b>: Azam Ali Gopang has sought post arrest bail in crime number 1354 of 2021 registered under sections 302, 324, 394, 109, 337-E(iii), 34 P.P.C. at the Orangi police station. Earlier, his application seeking bail was dismissed by the learned 6<sup>th</sup> Additional Sessions Judge, Karachi West on 21.05.2022.</p> <p>2. A background to the case is that on 07.12.2021 at about 3:45 a.m., the aforementioned F.I.R. was registered on the information provided by one Badshah Khan. He recorded that on 06.12.2021, he received a phone call informing him that his nephew Arsalan and his friend Yasir had been injured in a shooting incident. Badshah learned that both boys were returning back from their tuitions when robbers had opened fire on them. 16 year old Arsalan had expired whereas 17 year old Yasir had received a bullet injury on his hand. Badshah was also told by someone that one police constable by the name of Tauheed and one other by the name of Umair had shot at the 2 boys on the instructions of the applicant, who was then the SHO of the Orangi Police Station.</p> <p>3. I have heard the learned counsel for the applicant as well as the learned APG, who was assisted by the learned counsel for the complainant. Their respective arguments, for the sake of brevity are not being reproduced but are reflected in my observations and findings below.</p> <p>4. It appears that both parties have a difference of opinion on how the incident unfolded. According to the prosecution, the 2 boys were riding on a motorcycle heading for home when for some reason, Tauheed and Umair opened fire on them. To the contrary, the defence was of the view that the 2 boys were robbers, and had not stopped their motorcycle when told to stop by the</p>

policemen (it is pertinent to mention that out of Tauheed and Umair, only Tauheed was a policeman) and as a consequence the fires were made. Of course, it is the learned trial court which will determine at trial as to which of the 2 versions was correct.

5. As far as the present applicant Azam Ali Gopang is concerned, it is still vague as to how his name crept in the F.I.R. The complainant did not reveal as to who told him. It could not have been Yasir, as it is not claimed that he even knew the applicant prior to the incident. Yasir recorded a section 161 Cr.P.C. statement 7 days after the incident i.e. on 13.12.2021, in which he stated that when the incident occurred, one man was also standing nearby who had shouted instructions to the 2 shooters that the 2 boys should not escape alive. Yasir said that he later found out that the name of that man was Azam Gopang (the present applicant). Once again, it was not revealed by him as to who told him that it was the applicant. In view of the foregoing, whether Yasir had already seen the applicant prior to 17.12.2021, when an identification parade was held, becomes questionable. The section 161 Cr.P.C. statement also did not contain any description of the shouting man. Similarly, the prosecution claims that 2 passer boys, namely Jehanzaib and Saeed Noor, also saw the whole incident. Both recorded similar statements as Yasir. Their section 161 Cr.P.C. was also recorded 7 days later i.e. on 13.12.2021. They too gave no description of the shouting man nor was an identification parade held for them to confirm that the applicant was the person who gave instructions to the shooters. The delay in the recording of the section 161 Cr.P.C. statements and not holding the identification parade remains unexplained. Learned counsel for the complainant however attempted to justify the delay in recording section 161 Cr.P.C. statements by arguing that it was he who had told the witnesses not to go to the police station to record their section 161 Cr.P.C. statements. For obvious reasons, the argument, with much respect, carries little weight. The learned APG and the investigating officer could not offer any explanation. They could also not offer any explanation as to how the applicant was identified, why an identification parade was not held for the 2 supposedly neutral persons to identify the applicant nor where exactly was the applicant placed in this whole incident.

6. The record also reflects that Yasir recorded a section 164 Cr.P.C. statement on 17.12.2021. In this statement he further elaborated that on the fateful day 2

persons on a motorcycle, who they thought were robbers as they were not in uniform, started to chase them. Arsalan told Yasir to drive faster. The 2 robbers had come level to the 2 boys motorcycle and opened fire on them. Both boys got injured. Arsalan fell of the motorcycle whereas Yasir drove back home. It was when he was driving back home after the shooting that one man standing on the road, who allegedly was the applicant, shouted that the 2 boys must not escape alive. This story, as far as the involvement of the applicant in the crime is concerned, prima facie does not make sense. One, the instructions were allegedly shouted when the damage had already been done and Yasir was on his way back. Second, how did the applicant, SHO of the Orangi station, emerge out of the blue on the road at an unidentified spot and shout instructions at the end of the motorcycle chase. These are questions that can only be answered after evidence is led at trial. At the moment however, it appears that the nexus of the applicant with the crime certainly requires further inquiry.

7. It is also an admitted position that at best the applicant has been assigned the role of instigating the 2 shooters. The 2 shooters themselves deny that the applicant had anything to do with the incident. Whether the applicant was even present on the scene is not clear. Whether the shooters acted on the instructions and whether the applicant shared a common intention with the 2 shooters can only be decided after evidence is led. At the moment there is certainly not sufficient evidence which would, upon a tentative assessment, establish that.

8. Keeping the above observations in mind, I am of the view that the case against the applicant is certainly one of further inquiry. He is therefore admitted to post arrest bail against a solvent surety of Rs. 200,000 and a PR Bond for the same amount to the satisfaction of the learned trial court.

JUDGE